

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-122

July 24, 2003

MAINE PUBLIC SERVICE COMPANY
Request for Exemption of Chapter 304

ORDER APPROVING
STIPULATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Order, we approve a Stipulation agreed to by Maine Public Service Company (MPS), WPS Energy Service, Inc. (WPS) and the Office of the Public Advocate (OPA) and thus approve a partial waiver of the requirements of Chapter 304 of the Commission's Rules.

II. BACKGROUND

On February 21, 2003, MPS filed an application with the Commission requesting that the Commission exempt MPS from the provisions of Chapter 304 in connection with its subsidiary, Energy Atlantic, LLC (Energy Atlantic or EA). EA is a Competitive Electricity Provider (CEP) licensed to sell retail generation services in Maine pursuant to the provisions of 35-A M.R.S.A. § 3203.

Given MPS's status as a transmission and distribution utility, the MPS/EA relationship is governed by the provisions of Chapter 304 of the Commission's Rules. The relationship between MPS and EA has been further defined in *Maine Public Service Company, Request for Approval of Reorganizations and Exemptions and for Affiliated Interest Transaction Approvals*, Docket No. 98-138 (Sept. 2, 1998) (hereinafter the "EA Order"); *WPS Energy Service, Inc., Complaint Requesting Commission Action to Amend or Alter Commission Order of September 2, 1998 and Determine Whether Maine Public Service Co. and/or Energy Atlantic has Violated the Requirement of the Order or the Provisions of Chapter 301, 304 or 322*, Docket No. 2000-894, Order Approving Revised Stipulation (April 28, 2002) (hereinafter the "WPS Order").

On February 21, 2003, MPS announced that as of March 1, 2003, EA would discontinue marketing electricity in MPS's service territory. While it would honor existing contracts, no later than February, 2004, EA will have discontinued providing generation services in MPS's service territory. According to MPS, EA will retain its CEP license to do business in the State, and may continue to sell generation services in areas other than MPS's service territory. MPS argues that in light of EA's decision to terminate its operations in MPS's service territory, the prohibitions and protections of Chapter 304 as further defined by the Commission Orders in Docket Nos. 98-138 and 2000-894, are no longer necessary or relevant to govern EA's current relationship with MPS. As such, MPS seeks a waiver of the requirements of Chapter 304 effective

immediately. In addition, MPS notes that MPS's reorganization into a holding company structure under which MPS and EA have become subsidiaries of Maine & Maritimes Corporation (MMC), provides additional insulation protecting MPS's T&D utility ratepayers.¹

On March 10, 2003, the Commission issued a Notice of Proceeding which provided interested persons with an opportunity to intervene in this matter. WPS and the OPA filed petitions to intervene as full parties while the Industrial Energy Consumer Group (IECG) filed a petition for limited intervention in order to receive all filings and potentially to submit a brief if appropriate. In addition, Central Maine Power Company (CMP) requested that it be added to the service list in this case as an interested party – receiving all filings. The petitions and requests of the OPA, WPS, the IECG and CMP were granted without objection.

A technical conference on MPS's filing was held on April 10, 2003. Following the technical conference, the parties along with our Advisory Staff engaged in a series of settlement conferences and on June 24, 2003, we received a Stipulation entered into between MPS, the OPA and WPS which, if approved, resolves all issues in this matter.

III. DESCRIPTION OF THE STIPULATION

Under the provisions of the Stipulation, MPS would be exempted from the employee sharing provisions of Chapter 304 of our Rules subject to the following conditions:

- (1) Following the reorganization of MPS into a holding company structure, the management oversight of EA shall be conducted by senior management of the post-reorganization holding company, MMC.
- (2) The MMC Vice President of Unregulated Businesses, or his designee, shall have primary management oversight of EA. This person shall have no involvement in MPS "Restricted Activities". The term "Restricted Activities" shall have the same meaning as is set forth in the WPS Order at Section II, page 4. (A copy of the relevant pages of the WPS order are attached to the Stipulation presented in this matter.)
- (3) All other employees of MMC, including without limitation the CEO, the CFO and the General Counsel, shall be prohibited from sharing with EA, or the MMC Vice President of Unregulated Businesses (or his designee), any information they receive from MPS regarding said Restricted Activities, and consistent with Chapter 304(3)(G) of the Commission's Rules, shall be prohibited from sharing

¹ MPS's request to reorganize into a holding company was approved by the Commission in *Maine Public Service Company, Request for Approval of the Company into a Holding Company Structure*, Docket No. 2002-676, Order Approving Stipulation (March 26, 2003).

with EA any non-public pricing or other market information received by MPS or MMC from any competitive electricity provider.

(4) The General Counsel of MMC, in such capacity, shall be allowed to provide representation to both MPS and EA, including without limitation the representation of MPS in any Restricted Activities, and representation of EA in the negotiation, execution or enforcement of specific supply contracts between EA and its retail customers located outside the MPS Service Territory, provided that (i) EA does not market to customers in the MPS Service Territory, and (ii) the General Counsel shall be prohibiting from sharing with EA non-public information received in connection with the Restricted Activities.

(5) No MPS employee shall perform work for or on behalf of EA, except as permitted under the EA Order with respect to the sharing of employees to perform accounting and human resources. In addition, MPS and MMC are permitted to provide information technology ("IT") and related services to EA. The EA Order is amended to require that MPS shall provide all such services to EA pursuant to the Management & Support Services Agreement and Cost Manual approved by the Commission in Docket 2002-676. MPS and EA are prohibited from sharing their respective computer data bases, and shall adopt appropriate policies and procedures to ensure compliance with this restriction in the event that any MPS or MMC employees provide IT related services to EA.

(6) MPS, MMC and EA shall be permitted to share building space subject to the following restrictions: (1) in the event that MPS or MMC allow EA to operate in any MPS or MMC facility, MPS shall provide the Commission with thirty (30) days advance notice of doing so, and shall provide therewith a floor plan showing separation between EA employees and MPS employees reasonably adequate to prevent the sharing of non-public information; and (2) EA shall not be allowed to operate in the building housing the MPS "operations center," currently located on the Parkhurst Siding Road in Presque Isle.

The exemptions and waivers agreed to in the Stipulation are subject to the condition that EA will cease marketing in MPS's service territory effective March 1, 2003. In the event that EA elects to re-enter and market in the MPS service territory it shall provide the Commission with 120 days advance notice, during which time the Commission shall consider whether to extend, modify or terminate the waivers granted in this proceeding.

Other than the exemptions set forth in the Stipulation the parties agree that both MPS and MMC shall be subject to, and shall comply with, the standards of conduct imposed by Chapter 304. If the Stipulation is approved, MPS agrees to submit a revised Chapter 304 Implementation Plan in conformity with this Order by July 31, 2003.

IV. DECISION

As we have now stated on many occasions, to accept a stipulation the Commission must find:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
2. the process that led to the stipulation was fair to all parties; and
3. the stipulated result is reasonable and is not contrary to legislative mandates.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design)*, Docket No. 95-052, Order (Me. P.U.C. June 26, 1996).

We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery*, Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets these criteria.

The Stipulation before us was entered between MPS, the OPA and WPS. These entities, with divergent and often opposing views in this regulatory context, constitute a sufficiently broad spectrum of interests to satisfy the first criterion. *See Public Utilities Commission, Investigation of stranded Cost Recovery, Transmission and Distribution Utility Revenue Requirements and Rate Design of Bangor Hydro-Electric Company (Phase II)*, Docket No. 99-185, Order Approving Stipulation (Maine Public Service Company) at 3 (Aug. 11, 2000).

Based on the record before us, we find that the process that led to this Stipulation was fair and open. We, therefore, conclude that the second criterion for approval has also been satisfied.

Finally, we conclude that the result of the Stipulation is reasonable, not contrary to legislative mandate and consistent with the public interest. The Stipulation provides MPS with additional flexibility given its decision to exit the Northern Maine market. At the same time, the Stipulation contains adequate safeguards to ensure that MPS does not leverage its position as a T&D utility to unfairly benefit its affiliate EA in other areas of the State. In addition, the Stipulation retains Chapter 304's prohibitions against cross-subsidization, thus ensuring that MPS's ratepayers will not be paying for EA's activities in the competitive market. Finally, the Stipulation provides the Commission,

and the parties to this proceeding, with an adequate opportunity to revisit this matter should EA subsequently elect to re-enter the Northern Maine market.

Accordingly, we

O R D E R

1. That the Stipulation agreed to by Maine Public Service Company, the Office of the Public Advocate and WPS Energy Services, Inc. and filed with the Commission on June 24, 2003 is approved. The stipulation is attached and incorporated into this Order.

Dated at Augusta, Maine, this 24th day of July, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond

COMMISSIONERS ABSENT: Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.